

## ORDINANCE NO. 3492

### ORDINANCE AMENDING CHAPTER 7 OF THE CODE OF ORDINANCES OF THE CITY OF ASHEVILLE REVISING THE OPEN SPACE REQUIREMENTS

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WHEREAS, the City of Asheville has the authority pursuant to Part 3 of Article 19 of Chapter 160A of the North Carolina General Statutes, to adopt zoning regulations, to establish zoning districts and to classify property within its jurisdiction according to zoning district, and may amend said regulations and district classifications from time to time in the interest of the public health, safety and welfare; and

WHEREAS, a comprehensive amendment to the City's zoning regulations was adopted on May 27, 1997 (Ordinance No. 2369) and is codified in Chapter 7 of the Asheville City Code (herein "Unified Development Ordinance"), and maps dividing and classifying the property within the City's zoning jurisdiction were adopted on May 27, 1997 (Ordinance No. 2370) and are on file and maintained in the offices of the Asheville Planning and Development Department (herein "Official Zoning Maps"); and

WHEREAS, the Asheville City Council has determined following a public hearing on April 24, 2007, that it is in the interest of the public health, safety and welfare to amend certain provisions of the Unified Development Ordinance to revise the open space requirements;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ASHEVILLE THAT:

Section 1. Section 7-11-3 of the Asheville City Code is revised to read as follows:

"Sec. 7-11-3. Open space standards.

- (a) *Purpose.* The open space standards contained herein are established to provide for the reservation of open spaces in both residential and non-residential developments located in the City of Asheville and its area of jurisdiction. Preservation of open space in developing areas serves a variety of purposes, including meeting the recreational needs of residents, improving the aesthetic character of the community, reducing stormwater runoff, and enhancing air quality. The standards set forth below provide for the protection of open space in both residential and non-residential developments.
- (b) *Definitions.* For the purpose of this section, the following terms are defined.

*Active recreational facilities* mean tot lots, tennis or basketball courts, playgrounds with equipment such as swing sets and climbing apparatus, swimming pools, pavilions or covered decks available for common recreational use, or similar facilities.

*Suburban open space amenities* mean open water, wetlands, floodplains, woodlands, land which exceeds a 25 percent slope or is otherwise governed by the steep slope and ridgetop

requirements, land used for stormwater retention, land available to residents or tenants for active or passive recreation, including clubhouses, parks, walking trails not used to meet sidewalk requirements, playgrounds, swimming pools, benches, picnic tables, and similar amenities.

*Urban open space amenities* mean public sidewalks significantly in excess of standard sidewalk requirements, streetscape and hardscape areas accessible to the public including sidewalk café areas, areas containing public art, and similar amenities.

- (c) *Open space requirement.* Open space shall be provided in accordance with the following table for: initial residential development containing eight or more units or redevelopment or additional development that adds eight or more units; for initial nonresidential or mixed use development of lots containing one acre or more in area; or for redevelopment or additional development that adds 25 percent more nonresidential or mixed use floor area on lots containing one acre or more in area. The CBD district and single-family residential subdivisions with a minimum lot size of one acre or more are exempt from the requirements of this section.

ZONING DISTRICT	REQUIRED OPEN SPACE
<p>All residential districts, except URD</p> <p>(NOTE: single-family residential subdivisions with a minimum lot size of one acre or more are exempt from the open space requirements)</p>	<p>Single-family/duplex subdivisions: 20% of subdivision lot area.</p> <p>Other residential: 500 square feet of open space per unit or 15% of lot area, whichever is greater. In no case shall the amount of open space devoted to active recreational facilities constitute more than 10% of lot area.</p> <p>Nonresidential uses (e.g., churches, schools, etc.): 20% of lot area.</p>
<p>All other districts, including URD</p> <p>(NOTE: CBD is exempt from these requirements)</p>	<p>5% of lot area for developments that primarily include urban open space amenities</p> <p>15% of lot area for developments that primarily include suburban open space amenities</p>

Regardless of the requirements and exemptions of this subsection, any portion of the site of the proposed development that is designated as future open space or greenway in the Greenway Master Plan of the City of Asheville shall be reserved for open space. This area may be counted toward the total amount of open space required for the development.

If the total amount of land required to comply with the Greenway Master Plan is less than the total amount required for the development by the above table, then the developer shall provide additional open space to meet the requirement of the above table. If

the total amount of land required to be reserved to comply with the Greenway Master Plan exceeds the total amount required by the above table, then the developer must still provide the open space required by the Greenway Master Plan.

As compensation for any open space dedication associated with implementing the Greenway Master Plan above that requirement listed in the above table, the developer is eligible for a density bonus of one dwelling unit per each 1,000 square feet of land area in excess of that required in the above table or 500 square feet of nonresidential gross floor area per each 1,000 square feet of land area in excess of that required in the above table, up to a maximum of a 25% increase above the maximum density or intensity allowed in the applicable zoning district, provided hillside, river resource yard, flood protection, and other environmental preservation regulations are complied with. Alternatively, upon approval by the parks and recreation director, open space fee-in-lieu funds may be used to purchase the additional requirement, or the additional requirement may be reduced by the parks and recreation director.

Individual areas designated as open space areas shall not contain less than 500 square feet when developed with urban open space amenities and 2,000 square feet when developed with suburban open space amenities, although smaller areas may be approved by the planning and development director if the intent of this ordinance is determined to be met.

(c) *Land acceptable for open space designation.* The classes of land enumerated in the subparagraphs below may be utilized to meet the requirements of this section. For subdivisions, open space shall consist of land that is accessible from a public or approved private street either directly or via an easement of at least 10 feet in width. For other developments, open space shall be land that is visible from public rights-of-way or otherwise visually-accessible to the public. Land that is burdened with easements may be used provided that the easements do not interfere with the use of the land for open space purposes. In no case shall the following land be used for open space: land that is contaminated with hazardous or toxic waste or materials as defined by state or federal regulations (except land covered by an approved mitigation plan and deemed acceptable to the city); land occupied by streets, drives, parking areas, required landscape buffers, or structures other than recreational structures; and land with a minimum width less than 24 feet unless part of a greenway system or specifically approved by the planning and development director. Urban-scale mixed use districts (NCD, UV, URD, UPD) are exempt from the minimum width requirement. Public use of the open space may be limited to residents of the development except for land used for public sidewalks as described in paragraph (3) below.

(1) Open water, wetlands, and undisturbed floodplains (up to 50 percent of the requirement); River Resource Yard (up to 100 percent of the requirement).

(2) Land used for public sidewalks significantly in excess of standard sidewalk requirements, streetscape and hardscape

areas accessible to the public including sidewalk café areas, areas containing public art, and similar urban open space amenities.

(3) Land on which locally or nationally designated historic structures are located and determined to be contributing to the designation.

(4) Land which exceeds a 25 percent slope or is otherwise governed by steep slope and ridgetop requirements may be used to provide up to 50 percent of the required open space if existing slopes and vegetation so designated remain undisturbed.

(5) Land used for stormwater retention, provided such land is natural in appearance and is not separately fenced, may be used for up to 50 percent of the required open space; green roofs are eligible to be counted as open space under this provision. Additionally, land used for stormwater retention, provided such land is natural in appearance and is not separately fenced, that is developed using best management practices (e.g., constructed wetlands, rain gardens, green roofs or similar features), and either exceeds the required amount of retention or treats off-site stormwater may be used for up to 100 percent of the required open space at the discretion of the planning and development director after consultation with the city engineer.

(6) Land available to residents or tenants for active or passive recreation, including clubhouses, parks, walking trails not used to meet sidewalk requirements, playgrounds, swimming pools, benches, picnic tables, and similar land uses or facilities. This land may include steep slope lands, floodplains, and land used for stormwater retention so long as the land is provided with active or passive recreational amenities.

(d) *Reductions in required open space reservation.* The amount of land required to be designated for open space may be reduced by the planning and development director in the following situations:

(1) If public parks or public recreational facilities are constructed on the land designated as the open space consistent with a plan approved by the parks and recreation director, the open space requirements may be reduced in proportion to the extent of the improvements made by the applicant as determined by the parks and recreation director.

(2) If the land proposed for designation as open space adjoins or is otherwise immediately accessible and connected to parkland or other existing public open space, the open space requirements may be reduced by up to a maximum of 25 percent of the total requirement, provided access to the parkland is provided via an easement or other connection acceptable to the parks and recreation director.

(3) If active recreational facilities are provided to serve the residents of the development, the open space requirements may

be reduced in proportion to the value of the improvements made by the applicant up to a maximum of 25 percent of the total requirement as determined by the planning and development director.

(e) *Maintenance.* The owner or lessee of the property designated as the open space shall be responsible for the maintenance of the open space area. Landscaped areas shall be maintained in good condition and the entire area shall be kept clear of debris. Failure to maintain the area shall constitute a violation of this chapter and subject the violator to the penalty provisions of section 7-18-2 if not corrected within 30 days of notification. Alternatively, if acceptable to the parks and recreation director and/or public works director, as applicable, the land may be dedicated to the city for public use and thereafter maintained by the city.

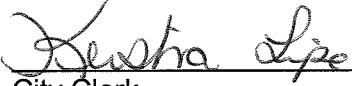
(f) *Fee-in-lieu.* For open space requirements of 10,000 or less square feet in area and not involving property affected by the Greenway Master Plan, a property owner may elect to pay a fee-in-lieu of open space instead of providing the open space. For other required open space areas, a property owner may pay a fee-in-lieu of open space designation for all or a portion of the open space requirement if such fee-in-lieu is acceptable to both the parks and recreation director and planning director. This fee shall be calculated by using the pro rata value of the designated property relative to the value of the entire site to be developed using tax appraisal data; for properties covered by agricultural or other exemptions, the city may utilize a separate appraisal method in its sole discretion. Funds collected in this manner shall be maintained in a separate account and shall be used to purchase or to enhance recreational use of property necessary to implement features of the Greenway Master Plan or the Parks and Recreation Master Plan of the City of Asheville provided such features are reasonably proximate to the site(s) from which the funds are collected. Where practical, the collected fees for each project shall be designated for specific parks and recreation acquisitions and/or enhancements by the parks and recreation director. For developments and subdivisions containing more than 50 residential units, the fee-in-lieu option may only be used for up to 50% of the open space requirements in order to ensure that these larger projects provide on-site open space for their residents; developments in urban-scale mixed use districts (NCD, UV, URD, UPD) are exempt from this requirement and up to 100% of the open space requirements may be accommodated through fee-in-lieu payments regardless of development size."

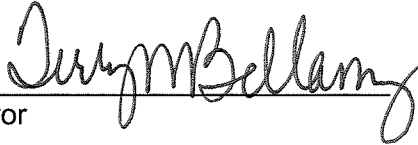
Section 2. If any section, subsection, sentence, clause, or phrase of this ordinance is, for any reason, held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each section, subsection, sentence, clause, or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

Section 3. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.


Section 4. This ordinance shall become effective upon adoption.

Read, approved, and adopted this 19<sup>th</sup> day of June, 2007.

  
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City Clerk

  
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Mayor

Approved as to form:

  
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City Attorney